IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5264 OF 2004.

Narayan Mohan Chaturvedi,
Age 45, D-75 Industrial
Area, Mohali Road,
Mathura, U.P. ... Applicant.

Versus.

1. C.B.I. Anti Corruption Branch,
   Mumbai.

2. State of Maharashtra.

3. The Central Bank of India,
   Vile Parle East Branch,
   Hanuman Road, Mumbai-57. ... Respondents.

Shri Abhay Pande for the Applicant.

Shri J.C.Satupute for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATE ON WHICH
ARGUMENTS WERE HEARD : 8th December, 2006.

DATE ON WHICH
JUDGMENT PRONOUNCED : 22nd December, 2006.

JUDGMENT.:

1. The prayer in this Criminal Application under section 482 of the Code of Criminal Procedure, 1973 is for quashing the FIR in Criminal Case filed at the instance of the 1st Respondent-CBI Anti-Corruption Branch, Mumbai. The Applicant has been arraigned as the

accused No.13 in the said case.

2. On 6th December 2004, notice was issued by this Court for final disposal at admission stage.

3. The allegation of the prosecution is that the Accused No.1, Accused No.3 and the Accused No.9 entered into a criminal conspiracy with the Accused Nos.11 and 20 and others, the object was of which to cheat the Central Bank of India by way of opening Letters of Credit. The Officers of the Central Bank of India accepted fabricated documents and misused their position. The Applicant was a Director of M/s.Sunain Trading Pvt.Ltd. and M/s.Chitiz Trading Pvt.Ltd. A letter of credit was opened by the Central Bank of India dated 3rd March 1991 in favour of M/s.Sunain Trading Co.Pvt.Ltd. for an amount of Rs.25,12,500/-. Another letter of credit was opened in the sum of Rs.15,31,875/- in favour of M/s.Sunain Trading Pvt.Ltd. by the Central Bank of India. Another letter of credit was opened in favour of M/s.Chitiz Trading Pvt.Ltd. An offence was registered by the 1st Respondent against the Applicant and others under section 120B, 420, 468 and 471 of the Indian Penal Code. Charge against the Applicant and accused has been summarised by the by the Inspector of Police, CBI, ACB, Mumbai as under:

". Thus the bank accused officials A-1, A-3 and A-9 in criminal conspiracy with accused A-5, A-8, A-10, A-11, A-13, A-14, A-15, A-17, A-18, A-19, A-20 and A-25, Private Persons and their firms, and opened the LCs beyond their official powers in violation of the Bank Rules on the basis of the false documents, diverted the LC amount to their sister concerns and put to various uses other than what was stipulated in the conditions for opening of LCs and on date Rs.3,01,48,000 and due interest is outstanding against the accused persons, thereby caused deliberate corresponding wrongful loss to the Central Bank of India. The acts of misconduct, omission and commission of A-5, A-8, A-10, A-11, A-13, A-14, A-15, A-17, A-18, A-19, A-20 and A-25 accused constitute to an offence punishable under section 120(B), 420, 468, 471 of IPC and accused No.A-1, A-3, and A-9 u/s. 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988."

4. The allegation of the prosecution is that the Chairman and Managing Director of the Central Bank of India (Accused No.9) misused his official position by

permitting continuous accommodation, and by committing irregularities allowed indiscriminate excesses over the sanctioned limit. The allegation is that he abused his power by permitting adhoc L.C.Limits of Rs.40,00,000/- to M/s.Sunain Trading Pvt.Ltd. The allegation is that the Accused No.3 Shri K.R.Shetty permitted opening of two current accounts in the name of M/s.Sunain Trading Pvt. Ltd. and M/s.Chitiz Trading Pvt.Ltd showing the Accused No.14 and the Applicant herein as Directors. The allegation is that the letters of credit were allowed to be opened with the object of cheating the Bank and diverting the funds of the Bank by entering into fake transactions on the bogus documents.

5. This Application came up before this Court (Coram: S.C.Dharmadhikari, J.) on 14th September 2006. The order passed by this Court reads thus:

> . "In all these applications process has been issued against the applicants in special cases filed by the C.B.I. at the instance of Central Bank of India, Vile Parle Branch. The submission is that the consent decree which was passed in favour of the bank in the suit instituted by it to which the applicant as also others were parties, the amounts have been duly paid with interest and the bank has

> issued no due certificate. In such circumstances, the plea is that the continuation of the proceedings before the special court, is an abuse of process of the court and even otherwise to secure ends of justice, this is a fit case where the proceedings, at least, insofar as the applicants before me, are, quashed and set aside. Both sides agree that for ascertaining position with regard to the bank's dues, it would be appropriate to issue notice to the complainant Central Bank of India. Hence, leave to amend. Amendments to be carried out by 19th September 2006. Issue notice to Central Bank of India, Vile Parle Branch returnable 6th October 2006. Hamdast allowed.

Accordingly notice was issued to the Central Bank of India. An affidavit has been filed by Shri S.R.Gobinath, the Chief Manager of the said Bank. In paragraph 2 of the affidavit, it is stated thus:

> "2. I say that as per record available with the Bank, there is no outstanding against the Applicant and the Bank has also issued no outstanding certificate in favour of Sunain Trading Pvt.Ltd., Chitiz Trading Pvt.Ltd. and

Vidaini Engineering Ltd."

6. The learned Counsel appearing for the Applicant relied upon the decision of the Apex Court in the case of Central Bureau of Investigation v/s. Duncans Agro Industries Ltd., Calcutta, [(1996) 5 S.C.C. page 591]. He submitted that there is no allegation of commission of offence against the Applicant under the provisions of the Prevention of Corruption Act, 1888. He pointed out that a civil suit was filed by the Central Bank of India against the company M/s.Sunain Trading Pvt.Ltd. in which parties entered into a compromise which is recorded under the order dated 3rd March 1991. The order records that a pay order for Rs.40,81,000/- by way of complete satisfaction of the claim of the Central Bank of India was handed over to the said Bank. Now there is no dispute over the fact that the entire outstanding dues of the Central Bank of India have been cleared to the satisfaction of the said Bank by M/s.Sunain Trading Pvt.Ltd as well as by M/s.Chitiz Trading Pvt.Ltd. He submitted that in view of the decision of the Apex Court in the case of CBI (supra), this is a fit case for quashing the proceedings as against the Applicant. Shri Satpute appearing for the 1st Respondent opposed the prayer by submitting that a prima-facie case of commission of offence was made out and no interference is called for.

7. I have considered the submissions. The affidavit of the 3rd Respondent, the Central Bank of India records that the dues payable to the said Bank have been received from M/s.Sunain Trading Pvt.Ltd and M/s.Chitiz Trading Pvt.Ltd and now there is no subsisting claim of the Bank.

8. It will be necessary to refer to the decision of the Apex Court in the case of CBI (supra). In the case before the Apex Court, a FIR was filed on the basis of the reliable information that the National Tobacco Company which was a division of M/s.Duncans Agro Industries Ltd had cash credit facilities against hypothecation of stocks with the United Bank of India, Calcutta. The ultimate credit facilities limit sanctioned to M/s.Duncans Agro Industries Ltd in the account of M/s.National Tobacco Company as on 12th January 1984 was to the tune of Rs.17.50 crores. In the year 1984, M/s.Duncan Agro Industries Ltd. applied before the Calcutta High Court and obtained an order that National Tobacco Co, a Tobacco Division of Duncans Agro Industries ltd. would henceforth function under the name and style of New Tobacco Company Ltd. which would be a fully owned subsidiary of M/s.Duncans Agro Industries Ltd. It was provided that the management of the newly constituted company would be carried on as per

the Scheme of Arrangement approved by the High Court. M/s.Duncan Agro Industries Ltd. approached the United Bank with a request to transfer the credit limits standing in the name of the said company to the newly created company. Accordingly a resolution was passed by the Board of Directors of the United Bank for transfer of the liability subject to condition that the company should furnish undertaking to create mortgage of all their assets and properties in favour of the Bank. It was alleged in the F.I.R. that the Board of Directors of the United Bank of India was misled because of the commission and omission of the officials of the Bank and the Board of Directors acted on legal opinion of Shri S.K.Ghosh, the Chief Officer (Legal) of the Bank though the opinion was detrimental to the interest of the Bank. It was alleged in the F.I.R. that the Directors of New Tobacco Co. assured that the Board's resolution would be furnished to the Bank to the effect that without the Bank's written consent, the holding level of percentage of shares in the New Tobacco Co, by Duncans Agro Industries Ltd. would not go undergo any change. It was alleged that in order to defraud the bank and to nullify the assurance given to the Bank M/s.Duncan Agro Industries Ltd. entered into a Memorandum of Understanding with M/s.New Tobacco Co on 6th March 1986 in order to render the very basis of the scheme approved by the High Court infructuous. It was alleged that the

MOU was executed so that the assets of M/s.Duncan Agro Industries Ltd would remain out of reach of the creditors. Offence was registered against the Chairman of Duncan Agro Industries Ltd., Directors of New Tobacco Co,.Ltd and Bank officers. The allegation was that the accused persons conspired with criminal design to defraud the bank and deliberately misappropriate huge stocks lying at different places. The offence was alleged under section 120B read with sections 409, 420, 467, 468 and 477 of the Indian Penal Code. There was a second F.I.R. filed by the Superintendent of Police, C.B.I. against the Directors and Officers of the said Companies. In paragraph 29 of the said decision, the Apex Court held as under:

> "29. In the facts of the case, it appears to us that there is enough justification for the High Court to hold that the case was basically a matter of civil dispute. **The Banks had already filed suits for recovery of the dues of the Bank on account of credit facility and the said suits have been compromised on receiving the payments from the companies concerned. Even if an offence of cheating is prima facie constituted, such offence is a compoundable offence and compromise decrees passed in the suits**

instituted by the Banks, for all intents and purposes, amount to compounding of the offence of cheating. It is also to be noted that a long time has elapsed since the complaint was filed in 1987. It may also be indicated that although such FIRs were filed in 1987 and 1989, the Banks have not chosen to institute any case against the alleged erring officials despite allegations made against them in the FIRs. Considering that the investigations had not been completed till 1991 even though there was no impediment to complete the investigations and further investigations are still pending and **also considering the fact that the claims of the Banks have been satisfied and the suits instituted by the Banks have been compromised on receiving payments, we do not think that the said complaints should be pursued any further. In our view, proceeding further with the complaints will not be expedient.** In the special facts of the case, it appears to us that the decision of the High Court in quashing the complaints does not warrant any interference under Article 136 of the Constitution. We, therefore, dismiss these appeals." (Emphasis supplied).

9. In the present case the bank did file a suit against the borrower company and in the said suit there is a complete settlement of the claim. The F.I.R. has been registered in the year 1993 and the suit was compromised on 3rd March 1994 against the company M/s.Sunain Trading Pvt.Ltd on payment of a sum of Rs.40,81,000/- by way of complete satisfaction of the claim of the Bank. Admittedly Central Bank of India received the entire dues from the Chitij Trading Co.Ltd.

10. In view of what is held by the Apex Court in the aforesaid decision, a case is made out for quashing the F.I.R. and the case as against the Applicant. The Offences under the Prevention of Corruption Act, 1988 are not alleged against the Applicant. Now no purpose will be served by continuing the case against the Applicant. However, prosecution will continue as against the other accused persons.

11. Hence the following order is passed:

O R D E R

. Rule is made absolute in terms of terms of prayer clause (b). The FIR and the case is quashed only as against the Applicant.

Judge.